

underpayment attributable to any undisclosed foreign financial asset understatement, see section 6662(j).

(2) *Criminal penalties.* In addition to other penalties, failure to comply with the reporting requirements of section 6038D and the regulations, or any underpayment related to such failure, may result in criminal penalties under sections 7201, 7203, 7206, et seq., or other provisions of Federal law.

(g) *Effective/applicability dates.* This section applies to taxable years ending after December 19, 2011. Taxpayers may elect to apply the rules of this section to taxable years ending prior to December 19, 2011.

(h) *Expiration date.* The applicability of this section expires December 12, 2014.

[T.D. 9567, 76 FR 78565, Dec. 19, 2011]

**§ 1.6039-1 Returns required in connection with certain options.**

(a) *Requirement of return with respect to incentive stock options under section 6039(a)(1).* (1) Every corporation which in any calendar year transfers to any person a share of stock pursuant to such person's exercise of an incentive stock option shall, for such calendar year, file a return with respect to each transfer made during such year. This return must include the following information—

(i) The name, address, and employer identification number of the corporation transferring the stock;

(ii) If other than the corporation identified in paragraph (a)(1)(i) of this section, the name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The name, address, and identifying number of the person to whom the share or shares of stock were transferred pursuant to the exercise of the option;

(iv) The date the option was granted to the person;

(v) The exercise price per share;

(vi) The date the option was exercised by the person;

(vii) The fair market value of a share of stock on the date the option was exercised by the person; and

(viii) The number of shares of stock transferred to the person pursuant to the exercise of the option.

(2) Each return required by this paragraph (a) shall be made on Form 3921, Exercise of an Incentive Stock Option Under Section 422(b) (or its designated successor) and shall be filed in such manner as provided in the instructions thereto.

(b) *Requirement of return with respect to stock purchased under an employee stock purchase plan under section 6039(a)(2).* (1) Every corporation which in any calendar year records, or has by its agent recorded, a transfer of the legal title of a share of stock acquired by the transferor (person who acquires the shares pursuant to the exercise of the option) pursuant to the transferor's exercise of an option granted under an employee stock purchase plan as described in section 423(c) and where the exercise price is less than 100 percent of the value of the stock on date of grant or is not fixed or determinable on the date of the grant, shall, for such calendar year, file a return with respect to each transfer made during such year. This return must include the following information—

(i) The name, address, and identifying number of the transferor;

(ii) The name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The date the option was granted to the transferor;

(iv) The fair market value of the stock on the date the option was granted;

(v) The actual exercise price paid per share;

(vi) The exercise price per share determined as if the option were exercised on the date the option was granted to the transferor (to be provided only if the exercise price per share is not fixed or determinable on the date the option was granted);

(vii) The date the option was exercised by the transferor;

(viii) The fair market value of the stock on the date the option was exercised by the transferor;

(ix) The date the legal title of the shares was transferred by the transferor (see paragraph (b)(3) of this section); and

(x) The number of shares to which legal title was transferred by the transferor.

(2) Each return required by this paragraph (b) shall be made on Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c) (or its designated successor) and shall be filed in such manner as provided in the instructions thereto.

(3) A return is required by reason of a transfer described in section 6039(a)(2) only with respect to the first transfer of legal title of the shares by the transferor, including the first transfer of legal title to a recognized broker or financial institution. If a contractual agreement exists or is entered into with a recognized broker or financial institution pursuant to which shares acquired upon exercise of the option will be immediately deposited into a brokerage account established on behalf of the transferor, then the deposit of shares by the transferor into the brokerage account following the exercise of the option is the first transfer of legal title of the shares acquired by the transferor, and the corporation is only required to file a return relating to such transfer of legal title.

(4) Every corporation that transfers any share of stock pursuant to the exercise of an option described in this paragraph shall identify such stock in a manner sufficient to enable the accurate reporting of the transfer of legal title to such shares. Such identification may be accomplished by assigning to the certificates of stock issued pursuant to the exercise of such options a special serial number or color.

(c) *Time for filing returns.* Each return required by this section for a calendar year must be filed in accordance with the guidelines and procedures set forth in the instructions to Form 3921 and Form 3922.

(d) *Penalty.* For provisions relating to the penalty applicable to the failure to file a return under this section, see section 6721.

(e) *Exception to return requirements of section 6039(a) for certain nonresident aliens—(1) Return requirement under section 6039(a)(1).* The return requirement of section 6039(a)(1) is not applicable to the exercise of an incentive stock op-

tion by an employee who is a nonresident alien (as defined in section 7701(b)) and to whom the corporation is not required to provide a Form W-2, Wage and Tax Statement (or its designated successor) for any calendar year within the time period beginning with the first day of the calendar year in which the option was granted to the employee and ending on the last day of the calendar year in which the employee exercised the option.

(2) *Return requirement under section 6039(a)(2).* The return requirement of section 6039(a)(2) is not applicable to the first transfer of legal title of a share of stock by an employee who is a nonresident alien (as defined in section 7701(b)) and to whom the corporation is not required to provide a Form W-2 for any calendar year within the time period beginning with the first day of the calendar year in which the option was granted to the employee and ending on the last day of the calendar year in which the employee first transferred legal title to shares acquired under the option as described in paragraph (b)(3) of this section.

(3) For purposes of this paragraph (e), the term *corporation* is defined in section 7701(a) and includes, but is not limited to, the corporation issuing the stock, a related corporation of the corporation, any agent of the corporation, any party distributing shares of stock or other payments in connection with the plan (for example, a brokerage firm), and any party in control of the payment of remuneration for employment to the employee.

(f) *Effective/applicability date—(1) In general.* This section is effective on November 17, 2009. This section will apply as of January 1, 2007.

(2) *Transition period.* Taxpayers are not required to comply with the return requirements of paragraphs (a) and (b) of this section for stock transfers that occur during the 2007, 2008 and 2009 calendar years.

[T.D. 9470, 74 FR 59090, Nov. 17, 2009]

**§ 1.6039-2 Statements to persons with respect to whom information is reported.**

(a) *Requirement of statement with respect to incentive stock options under section 6039(b).* (1) Every corporation filing